

LAKE COUNTY BOARD of ADJUSTMENT
August 11, 2010
Meeting Minutes

MEMBERS PRESENT: Clarence Brazil, Sue Laverty, Mike Marchetti, Tim McGinnis

STAFF PRESENT: Joel Nelson, LaDana Hintz, Lita Fonda

Mike Marchetti called the meeting to order at 4:03 pm

Motion made by Clarence Brazil, and seconded by Mike Marchetti, to approve the July 14, 2010 meeting minutes.

Vote split, 2 in favor (Clarence Brazil, Mike Marchetti) and 2 abstaining (Sue Laverty, Tim McGinnis)

Board members asked what happened with a 2 in favor, 2 abstaining (due to not being present at the meeting) vote. The vote was a majority of those present on 8/11/10, but did not represent the 3 required votes for the Board to take action. The consensus was that this would not cause turmoil, although technically it hadn't passed. Joel didn't think it was really addressed by the rules. Mike said to put the meeting minutes in the record.

OTHER BUSINESS

There was at least one item for a meeting next month.

BOARD OF ADJUSTMENT RULES REVIEW

Joel Nelson presented the staff memo and draft changes to the BOA rules. (See attachments to minutes in the August 2010 meeting file for memo and draft.) The Board and staff commenced to go through the rules and suggested changes. Mike suggested removing 'also' from the new section in #1. Sue L suggested labeling the new section as 1.d. Mike asked if that made the second sentence in 1.d redundant, and Sue L agreed. Joel noted the original section in #1 was straight from statutes, so the intent behind 1.d was to have this Board adopt the same procedure as was referenced above. This was why 1.d followed the rest of the information in #1.

On page 2, Joel received a comment from Kurt Moser that he didn't like the word 'packet' in 3.c. This could be changed from 'Board packets' to 'written information the Board receives prior to the meeting'. Joel and Sue L liked packets. It would work either way.

Joel continued to review the suggested changes.

Sue L asked if the number of items presented at a meeting could be limited. Mike said that happened in Flathead County. When he had an application there, it took 3 months to get an opening on the agenda. The Board allowed 6 items per meeting, and 1 hour per item. He felt put off at first, but after he sat through a meeting, he understood why. Each item was contentious. Clarence asked if there were timeframes requiring an item to be heard within a certain number of days. Joel didn't think there was for variances and so

forth. Clarence thought the recent [June] meeting was the only time that had happened while he had been on the Board, [where there was overlap with the BOA and Planning meetings]. Sue L recalled some other meetings that were long, running after 7pm.

Tim said time was money, and the Board often dealt with summer people on the lake. He couldn't see putting them off. It didn't happen very often that they had a lot of items. LaDana noted that at the long June meeting, two of the items were violations. Those have to be heard. Sue L asked if they could have postponed items, when the meeting ran over time. Joel and Mike thought they could. Joel said it could be tabled to the following Wednesday.

Mike said what happened at the Flathead meeting that sped things up was the administrator of the Board was the timekeeper, and said when time was up. The speaker would be asked to leave the microphone for the next person and sit down. Everyone was limited to 3 minutes. This was enforced.

Sue L said they could drop her suggestion. Joel said he would talk to Kurt and get his thoughts. He could look into how Flathead County did this. Mike said he'd like to give staff permission if, for example, there were 11 items scheduled, to say it couldn't be done. The staff probably had a feeling for which items would be contentious. Joel said he'd been surprised though. Tim asked how this fit in with public notice.

Sue L and Joel said there'd have to be a straight cutoff. Sue L added this was fairer if people came in from out of town. This was why the June meeting continued, was because there were a few people from out of the area. She thought this was just an idea. It didn't happen often, but there had been times where it felt rushed and people felt tired. Joel recalled a meeting or two that occurred 4 or 5 years ago where the meeting began at 3 pm instead of 4 pm. Tim said this worked for him; he was in town. Sue L said for her, it depended on the time of year.

The new language for #5 was reviewed. Mike and Sue L thought the new language was clearer. Sue L asked about adding to 5.b that minutes could be approved by a majority of those present at the previous meeting. Joel said he'd add a sentence, and check what Kurt thought. He liked the idea. Sue L suggested the majority of those present at the previous meeting could approve, modify or deny the minutes.

Joel referred to item 5.xiii. He conveyed Kurt's comments to replace 'shall' with 'may' in xiii, and that he wasn't sure about the 35 day restriction. Joel's thought was it allowed it to be tabled long enough to allow for the next BOA meeting. They probably didn't need to specify a time limit. Sue L suggested just saying 'until the next meeting'. Joel recalled June the meeting where all 5 members were present, one recused himself for an item, and the vote was 2 to 2. He wasn't sure how that fit into the existing rules and wanted to clarify that here.

Tim returned to 5.c.vi.A on pg. 3. Why did the Board want this? Lita explained this came from Other Business at the last [July] meeting, where comments received from the

public about the public comment portion of the June meeting were relayed. One member of the public didn't feel she had much chance to get her opinion across. The woman had attended other meetings, where a simple show of hands was given when there were lots of people in attendance so they could at least feel like they got to say if they were there to support or oppose an item. 5.c.vi.A might have come from this comment. Other comments were also discussed at the last meeting.

Clarence said this gave the impression that they were voting for or against something. He didn't like that idea. If most people were for something, and the Board had to vote against it because of the rules and regulations, the public would comment that they were for it and the Board voted against it. Tim didn't think they should be swayed by how many were for or against. The purpose of public comment was to give him someone's interpretation of what the rules said. If someone had a good argument, then he understood that position. He was uncomfortable with a perception that the public was voting on this. Lita understood this point and how it could be perceived. She didn't think that was the intent of the suggestion. She thought the woman suggested it as another tool that the chairperson might keep in mind at busy meetings when the situation seemed correct for that.

Mike said when there was an extreme amount of public comment going on, and the floor was open for a small period of time, a hand vote could be requested on who would speak in opposition or in approval of the measure. Tim said he wasn't interested in that, and thought it had nothing to do with it. He didn't want the chairperson to have the discretion to do that. He thought it gave the chair a lot more power than they would have. He thought it would be like an audience to a trial being asked to vote by the judge. They were supposed to follow the rules, not to be swayed by public opinion. Sue L said the rules also included the public. Clarence recalled the County attorney once telling the Board they were to not be swayed by public opinion. They were to be swayed by rules. Tim said he listened to the public. He listened for their take on the rules. It didn't have to do with how many were for or against. Lita suggested it could be a tool for the chair to be aware of and use as appropriate, but it didn't necessarily need to be in the rules. Tim said he could go along with that. Clarence said it should be scratched [from the rules], and left at the discretion of the chair.

Tim asked what the purpose of 5.a.vi.B was. Joel explained that at the Planning Board, they often ask those in favor to speak first and then those opposed. Board members expressed no strong feeling on this. It could be left in. Board members agreed that 5.a.vi.A should be struck.

Clarence asked if there would be a timer of some sort for the 3-minute limit in 5.a.vi.C. Would there be some kind of timer the public could see? Mike suggested a timer with a bell. Sue L said if the Board was trying to listen to what people were saying, they could not be looking at a timer. Clarence and Joel suggested a 3-minute egg timer with a ding. Tim asked if the attorney had a comment on this, or applying the rule equally. Clarence noted that at City Council, public testimony was limited to 3 minutes per individual, but a person could assign the time to another individual, who could then talk longer. Sue L

recalled the Planning Board did that at a Kootenai Lodge meeting. Joel suggested not putting this in the rules. Sue L agreed. Joel mentioned if the chair wanted to do something like that, he could.

Mike thought by Roberts Rules you could yield your allocated time, if you were going to speak. Tim thought it was important to point out they were not obligated by Roberts Rules of Order. It was a precedent for the guiding principle. You didn't want to get tied up into Roberts Rules. The Board didn't work by Roberts Rules, but more on precedent. Board members agreed, and also agreed the chair could allow yielding or not, which would give flexibility.

Clarence suggested in 5.c.vi.D to add at the microphone or at the podium. Joel noted the microphone sometimes wasn't on. Tim thought it was more to avoid people turning around and talking to others in the audience.

Tim asked who decided who was disruptive for 5.b.vi.E. Was it the Board or the chair? Board members touched on this.

Tim asked regarding 5.b.viii. He liked the flexibility of 'may' in 5.b.viii. Mike gave the example of an applicant bringing in a change with a bunch of documentation. The Board should probably table the request until the staff have time to review the new documentation. Joel affirmed. This should be submitted to staff, and a motion made to table the item. Tim said the Board could give an option to the applicant that the Board could proceed without looking at the new material, or if the applicant wants them to look at it, the item could be tabled. Joel gave an example if a 1-page comment letter was submitted, the Board could accept it if they felt they could read it, consider it and understand it.

Joel recommended changing the 'shall' to 'may' 5.b.x. Discussion ensued about changing 5.b.xi also, but Board members felt 'shall' should stay there.

Joel relayed that Kurt thought 5.b.xiii could be removed. He suggested leaving the first sentence, with 'shall' changed to 'may'. Sue L and Tim said they were okay with that. Joel said the alternative motion could be to table, deny, or ask for an extension from the applicant or so forth. Mike added the request could be modified.

Tim asked on 5.c if the point of Other Business for the public to comment. Joel said typically it was not announced that we were in Other Business and if someone wanted to comment, they could. Mike said Flathead County Other Business was done first. People could come in, say something and leave. Sue L preferred the Other Business at the end. Clarence thought if it was first, it could add a lot of time to the meetings.

Joel moved to #6 on pg. 5 and highlighted the changes. Tim asked if the part suggested for elimination at the end of #6 was not part of MT code. Joel said MT code just required 3 concurring members to vote in favor of a request. Given the recent denial due to lack of 3 concurring votes when a full Board was present, it might have been good to discuss

alternative motions. The applicant didn't know what happened. He didn't believe it was truly denied because it lacked the 3 votes. Sue L pointed out that this was clear in 5.b. Mike asked when an applicant with a denied application could come back with a new application. Was there a time limitation? Or could they reapply the next month with new conditions? Joel explained they would need to get an application in by the deadline, which in the case of this month, happened at the same time as the Board meeting. Staff had flexibility to say they could be on the next month's agenda. Mike noted the Board could also table until the next month.

Tim checked the applicant could come to the meeting, see only 3 members, and say they didn't want to do this until there was a full Board meeting, before the item started. Joel supposed they could. They could withdraw an application at any time. Mike recalled one conditional use that was pulled in the middle of the discussion. Sue L thought they came back and Mike agreed.

Joel added that typically we would have to pick up some additional fees for the costs of notices. There wasn't really a limitation about coming back. If someone wanted to be tabled due to a lack of members without changing the application, it could be tabled without additional charges, since the notice would not have to be rerun; they could announce that it was tabled. Mike said if there were material changes to the application because of the Board discussion, that would be different. Joel said if people traveled a long way to comment, the comments could be accepted then and there. Mike said the procedure would be to open the floor to comment, if you wanted to do that. That comment would have to be read for record back at the next meeting where the Board actually was meeting to discuss that item. Joel thought ideally that's what would happen.

Tim asked if the Board needed to vote on the rules. Joel explained this meeting was noticed as a work session, and the notice said the rule revisions would be adopted at a later date.

OTHER BUSINESS

General conversation broke out.

Motion made by Sue Laverty to adjourn, and Clarence Brazil seconded. Motion carried, all in favor. Meeting adjourned at 5:10 pm.